

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr.Misc. Appln Nos.177 & 178 of 2006

Date

Order with signature of Judge

For hearing of Case

18.08.2016

Mr. Muhammad Anwar Tariq, advocate Appellant.
Ms. Akhter Rehana Addl. P.G.

.-.-.-.

The only grievance of the complainant is that Direct Complaint filed by Respondent No.1 before District & Session Judge, (South) Karachi, which was registered as Complaint No.340/2000 cannot be tried by the learned Additional Session Judge on the ground that Special Court have been established under **Section 4 of Ordinance XXVI of 2002** Small Claims and Minor Offences Courts Ordinance, 2002, (hereinafter Ordinance, 2002) which has power to try the offence, complaint against the applicant by Respondent No.1. Complaint was under **Section 176 PPC**, according to the learned counsel on the promulgation of Ordinance, XXVI of 2002 the case should have been transferred to the Court established under the special law.

2. Learned counsel for the applicant has taken only one ground in the Misc. Application that the Court of IIIrd Addl. Session Judge (South) Karachi, after promulgation of the aforesaid Ordinance, seize to have the authority / jurisdiction to continue the prosecution of Direct Complaint. However, in para-3 of the ground he concedes that it is case of change of forum as the notification of establishing the Court under the aforesaid ordinance has already been issued. I have also carefully examine **Small Claims and Minor Offences Courts Ordinance, 2002**, and notification issued by the Law Department dated **26.11.2007**, whereby the jurisdiction to entertain cases of

minor offences is assigned to the Ist Judicial Magistrates in each district. I have also gone through the charge framed by the trial court before filing of this Cr. Misc. Application and the applicant is charged of having committed an offence under **Section 176 PPC** for which offence cognizance has been taken by IIIrd Addl. Session Judge (South) Karachi. Offence under **Section 176 PPC** is punishable with simple imprisonment for a terms which extends to one month or with fine which may extend to Rs.1500/- or both. Therefore, in my humble view the charge has been framed for an offence, which would attract the provision of the Ordinance of 2002, and it is triable by the **Ist Judicial Magistrate (South) Karachi**, having jurisdiction in terms of Schedule Part-II attached with Small Claims and Minor Offences Courts Ordinance, 2002.

3. From 2006 this case is stand still and no progress has been made, as a matter of routine the parties were taking dates. Without going into merits, since the law has come in field and new court has been established, proceeding before the trial court in **Cr. Complaint No.340/2000** stand transferred to the Special Court under Small Claims and Minor Offences Courts Ordinance, 2002, that is the court of First Judicial Magistrate, South, Karachi. In the connected matter, (Cr.Misc. Application No.178/2006) the same applicant is also facing trial for committing an offence under **Section 176 PPC** in other proceedings. The second complaint was registered as Complaint **No. 341/2003** which is pending before the Court of XVth Judicial Magistrate South, Karachi. Since by official notification the Court of First Judicial Magistrate South, Karachi has the jurisdiction to try case under the Small Claims and Minor Offences Courts Ordinance, 2002, the Complaint No.341/2003 is also transferred to the Court of Ist Judicial Magistrate (South) Karachi.

4. Once the files are received from the two courts to the Special Court, Special Court should proceed from the stage where the case have already reached at the time of promulgation of Ordinance, XXVI, 2002.

5. Since the applicant/accused facing trial in the Court of IIIrd Additional Session Judge, South, Karachi in Complaint No.340/2000 and XV J.M South, Karachi in Complaint No.341/2003 is not present today, issue notice to the applicant for his appearance before the Court of First Judicial Magistrate South Karachi for **01.9.2016**. By 1.9.2016 the complaint No.340/2000 and 341/2003 should reach to the said Court from the respective Courts.

6. The Court of Ist Judicial Magistrate from 01.9.2016 shall expedite the proceeding and dispose of both the Cr. Complaint **No.340/2000** and **341/2003** within three months on merit and report compliance through MIT-II to this Court for perusal in Chamber.

Both the Cr. Misc. Applications stand disposed of in above terms.

JUDGE

SM

